

BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

SAN JUAN COUNTY,

Appellant,

MARINE ENVIRONMENTAL
CONSORTIUM,

Intervenor,

v.

STATE OF WASHINGTON DEPARTMENT
OF ECOLOGY and ECOLOGICAL
COMMISSION,

Respondents,

and

WILLIAM and DOREE WEBB,

and

THE SAN JUAN ISLANDS AQUACULTURE
ASSOCIATION,

Intervenors.

SHB No. 88-52

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

1 This matter, appeal by a local government from the decision of
2 the State Department of Ecology to reject shoreline master program
3 amendments, is brought pursuant to RCW 90.58.190.

4 The matter came on for hearing before the Shoreline Hearings
5 Board, Wick Dufford, Chairman, Judith A. Bendor, Harold S. Zimmerman,
6 Nancy Burnett, Gordon Crandall and Paul Cyr, Members. Administrative
7 Appeals Judge William A. Harrison presided.

8 The hearing was conducted at Friday Harbor, Washington, on
9 March 13, 1989. In addition the following materials, together with
10 affidavits and other documents attached thereto, were submitted and
11 considered:

- 12 1. Opening Brief of San Juan County;
- 13 2. Opening Brief of Marine Environmental Consortium;
- 14 3. Response Brief of San Juan County;
- 15 4. Response Brief of San Juan Islands Aquaculture Association;
- 16 5. Response Brief of Marine Environmental Consortium;
- 17 6. Response Brief of State Ecological Commission;
- 18 7. Response Brief of State Department of Ecology;
- 19 8. Rebuttal Brief of State Ecological Commission;
- 20 9. Rebuttal Brief of San Juan County;
- 21 10. Rebuttal Brief of San Juan Islands Aquaculture Association;
- 22 11. Rebuttal Brief of Marine Environmental Consortium.

23 Appellant San Juan County was represented by Scott Wessel-Estes,
24 Deputy Prosecuting Attorney. Intervenor Marine Environmental
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1 Consortium was represented by Peter J. Eglick, Attorney at Law.
2 Respondent State of Washington, Department of Ecology was represented
3 by Allen T. Miller, Jr., Assistant Attorney General. Respondent State
4 of Washington, Ecological Commission was represented by Deborah L.
5 Cade, Assistant Attorney General. Intervenors William and Doree Webb
6 and San Juan Islands Aquaculture Association were represented by Scott
7 McKay, Attorney at Law. Reporter Rebecca Winters recorded the
8 proceedings.

9 A preliminary motion was made by intervenor San Juan Islands
10 Aquaculture Association to disqualify the member of this Board
11 designated pursuant to RCW 90.58.170 by the Washington State
12 Association of Counties. As stated on the record at hearing, this
13 Board declined to require that a statutory member step down. Having
14 fully considered the oral and written argument of counsel, as well as
15 the records and file herein, and being fully advised, the Shorelines
16 Hearings Board makes these

17 FINDINGS OF FACT

18 I

19 This is an appeal under RCW 90.58.190 from the state Department
20 of Ecology's decision rejecting San Juan County's proposed shoreline
21 master program amendments relating to aquaculture.

22 II

23 The Department of Ecology (DOE) found that the amendments met the
24 requirements of the Shoreline Management Act and of the Guidelines for
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1 Development of Master Programs, but rejected them because five of the
2 seven members of the State Ecological Commission notified DOE in
3 writing of their disapproval of the proposed amendments pursuant to
4 RCW 43.21A.190.

5 III

6 The process leading to rejection began in 1985 with an initial
7 draft of aquaculture amendments drawn up by San Juan County. After
8 some two years of public review the County submitted its aquaculture
9 amendments to DOE in 1987 for approval. These were rejected by DOE
10 and remanded with detailed suggestions for modifications. From these
11 suggestions modifications were made, with public involvement, and the
12 amendments were again submitted to DOE for approval in May, 1988. The
13 DOE, after public hearings, stood ready to approve the amendments and
14 to adopt them as state regulations which, under RCW 90.58.090 and
15 -.120, is a prerequisite to their taking effect. Before doing so,
16 however, DOE submitted the aquaculture amendments to the State
17 Ecological Commission for their consideration. The Ecological
18 Commission also conducted public hearings. The amendments were
19 changed non-substantially by agreement of the County, respondent San
20 Juan Islands Aquaculture Association and DOE on September 21, 1988, in
21 an effort at compromise. The Ecological Commission conducted the last
22 phase of its public hearing on October 13, 1988. In the week
23 following, five of the seven members of the Ecological Commission
24

notified the Director of DOE in writing of their disapproval of San Juan County's aquaculture amendments. On October 27, 1988 DOE notified San Juan County by letter that:

The Department of Ecology has completed review of the County's proposed Shoreline Master Program amendment and finds it to be in conformance with RCW 90.58.120 and .200 and meets the Guidelines for Development of Master Programs, Chapter 173-16 WAC. However, we regret to inform you that the State Ecological Commission does not share this position and, pursuant to RCW 43.21A.190, disapproved the proposal on October 18 by a 5-2 margin. Therefore, the Department must reject the proposed amendment as a result of the Commission's action. A copy of each Commission member's advice and guidance on the proposal is enclosed for your information.

IV

San Juan County now appeals to this Board for review of that rejection. Its notice of appeal was filed November 17, 1988. The appeal names the DOE and the Ecological Commission as parties respondent.

V

By separate orders, motions to intervene were granted in favor of the Marine Environmental Consortium (MEC) which supports the amendments and the San Juan Islands Aquaculture Association (SJIAA) which opposes the amendments. Moreover, the DOE supports the amendments in this proceeding despite its rejection of them. Therefore the County, MEC and DOE are in support of the amendments.

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1 The Ecological Commission and SJIAA are in opposition to the
2 amendments.

3 VI

4 The aquaculture amendments to the San Juan County Shoreline
5 Master Program which are now at issue are set forth in DOE exhibits
6 numbers 3 and 4 attached to the Brief of DOE dated February 24, 1989,
7 as filed in this matter. Page number references will be to these
8 exhibits.

9 VII

10 The amendments at issue are challenged in this proceeding by
11 argument that they derogate aquaculture in favor of other uses and
12 revoke aquaculture's status as a preferred use.

13 VIII

14 The following are particular aspects in which the aquaculture
15 amendments are challenged in this proceeding:

16 1. Policy 5 (p.9) of the amendments, provides:

17 Aquaculture should not be allowed in the following areas:

- 18 a. Areas that have little natural potential for the
19 type(s) of aquaculture under consideration.
- 20 b. Areas that have water quality problems that make the
21 areas unsuitable for the type(s) of aquaculture
22 under consideration.
- 23 c. Areas devoted to established uses of the aquatic
24 environment with which the proposed aquacultural
25 method(s) would substantially and materially
26 conflict. Such uses would include but are not

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(6)

1 limited to navigation, moorage, sport or commercial
2 fishing, log rafting, underwater utilities, and
active scientific research.

- 3 d. Areas where the design or placement of the
4 facilities would substantially degrade the aesthetic
qualities of the shoreline.
- 5 e. Areas where navigation by recreational boaters and
6 commercial traffic will be significantly restricted.
- 7 f. Areas where an aquacultural proposal will result in
8 any significant adverse environmental impacts that
cannot be eliminated or adequately mitigated through
enforceable conditions of approval.
- 9 g. Areas near National Wildlife Refugees or critical
10 habitats (as defined by the State of Washington or
San Juan County) where the proposed activity will
11 adversely affect the refuge/habitat use or value.

12 Intervenor, SJIAA, asserts that this policy establishes "flat
13 prohibitions" against aquaculture which do not exist for other uses.

14 2. Substantive restrictions. Intervenor, SJIAA, cites the
15 "experimental aquaculture" definition at 16.40.1301(p. 24) of the
16 amendments as objectionable because such projects are subject to a
17 five-year permit (Regulation 24, p. 14) which can be extended and
18 because the applicant must pay for monitoring (Regulation 13, p.12).
19 The SJIAA also raises objection to: 1) provisions requiring
20 aquaculturists to pay for maintenance or improvement of public boat
21 launches, docks or the like in proportion to use (Regulation 8, p.
22 11), 2) limits on the height of tool storage containers (Regulation
23 19, p. 13), 3) limits on hours or days of operation to minimize noise,
24 light or glare (Regulation 5, p. 11), 4) a requirement for liability

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1 insurance to protect persons or property (Regulation 7, p. 11), 5) a
2 requirement of a bond to remove or repair an abandoned or unsafe
3 structure (Regulation 10, p. 11), 6) a requirement that anti-fouling
4 or other chemicals be federally and state approved (Regulation 18, p.
5 13), 7) a requirement that net pens or rafts be one mile from any
6 other facility with net pens or rafts except where the applicant can
7 "demonstrate to the county's satisfaction that the environmental and
8 aesthetic concerns expressed in this Master Program will be
9 protected." (Regulation 23, p. 14), and 8) a requirement that
10 aquacultural uses be 600 feet (1500 feet for net pens or substrate
11 modification) from National Wildlife Refuge lands or special habitats
12 for birds or mammals as identified in recognized reference documents
13 (Regulation 16, p. 13).

14 3. Procedural restrictions. Intervenor, SJIAA, raises objection
15 to: 1) a requirement for including an "environmental assessment" in
16 each application for aquaculture including information on water
17 quality, tidal variations, prevailing storm wind conditions, current
18 flows, flushing rates and similar matters (Regulation 11, p. 12), 2) a
19 requirement that "baseline studies" may be required depending on,
20 among other things, existing conditions and probable adverse
21 environmental impacts (Regulation 11, p. 12), 3) a requirement for
22 "operational monitoring" (Regulation 13, p. 12), and 4) a requirement
23 that a "visual impact analysis" may be requested of aquaculture
24 applicants (Regulation 26, p. 14).

IX

Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such. From these Findings of Fact, the Board makes these

CONCLUSIONS OF LAW

I

Any local government, such as San Juan County in this case, which is aggrieved by the Department of Ecology's (DOE's) decision to reject a master program adjustment (amendment) may appeal DOE's decision to this Board. RCW 90.58.190(2).

II

A threshold question is raised by respondent Ecological Commission which has filed a Motion for Summary Judgment in which it contends that we lack subject matter jurisdiction to review actions of the Commission. In particular, the Commission urges that we lack jurisdiction to review its substantive decision in matters such as this one concerning shoreline master program amendments. We disagree. We hold that we have an implied power to review the Commission's decision as necessary to the exercise of our express power to review the decision of DOE. "[A]n agency has only those powers either expressly granted or necessarily implied from statutory grants of authority." Green River Community College v. Higher Education Personnel Board, 95 Wn.2d 108, 112, 622 P.2d 826 (1980) (emphasis added) adhered to as modified, 95 Wn.2d 962, 633 P.2d 1324 (1980).

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III

The necessity of our implied power to review the Ecological Commission's substantive decision in master program cases is apparent from both the facts and the law in this case.

First, as a factual matter, the Commission's decision to reject these master program amendments is inextricably interwoven with the decision of DOE. The rejection by the Commission is the only reason given by DOE in its letter of rejection to San Juan County. (See Finding of Fact III, above).

Second, as a matter of law, the implied power in this Board to review the Commission's decision is consistent with RCW 90.58.190(2) placing local governments' master program appeals on a single track from DOE to this Board with subsequent right of appeal in Thurston County Superior Court. We decline, as inconsistent with RCW 90.58.190(2), the position of the Commission that a two track procedure exists whereby a local government aggrieved by rejection of a master program amendment must seek review of the DOE decision here, while commencing in superior court a review of the identical Commission decision.

IV

Having concluded that we possess the implied authority to review the substantive decision of the Ecological Commission regarding shoreline master program amendments, we deny the Commission's Motion for Summary Judgment in that respect.

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V

Next, the Motion for Summary Judgment of the Ecological Commission further urges that we lack subject matter jurisdiction to look behind the substantive decision of the Commission and examine the procedures leading to it. In this, we agree. We do not hold such power to be necessary to the exercise of our express powers because, under RCW 90.58.190(3), where the substantive decision to reject master program amendments is improper, the remedy is to order that they be upheld and made effective.

Nonetheless, we are aware of the Shoreline Management Act's delicate balance between state and local government. Timeliness appears to be a part of that balance in master program adoption. RCW 90.58.090.

VI

Having concluded that we do not possess the implied authority to review the procedures of the Ecological Commission leading to its substantive decision, we grant the Commission's Motion for Summary Judgment in that respect. Accordingly, issues No. 2, 3, 4 and 5 of the Pre-Hearing Order entered December 19, 1988, are stricken. All other issues therein are retained.

VII

The Motion for Summary Judgment filed by intervenor San Juan Islands Aquaculture Association is granted and denied to the same

1 extent and on the same grounds as set out above for the Motion for
2 Summary Judgment of the Ecological Commission.

3 VIII

4 Role of the Ecological Commission. Our review of the substantive
5 decision of the Ecological Commission in this case begins with the
6 fact that the vote of the Commission was both given by it and received
7 by DOE as a veto, compelling DOE to reject amendments which it would
8 otherwise approve. (See Finding of Fact III, above). The authority
9 under which the Commission acted stems from the 1970 statute which
10 created both DOE and the Commission. In pertinent part, that statute
11 provides:

12 It shall be the duty of the members of the
13 commission to provide advice and guidance to the
14 director on each of the following:

15 (1) . . .

16 (2) Any comprehensive environment quality plan,
17 program or policy proposed for adoption by the
department as a state plan or policy pertaining to an
environmental management activity;

18 (3) . . .

19 (4) . . .

20 (5) . . .

21 (6) Any other matter pertaining to the activities
22 of the department submitted by the director for which
advice and guidance is requested.

23 The director shall submit in writing to each member
24 of the commission all rules and regulations, other than
25 for procedural matters, proposed by him for adoption in
accordance with the procedures of chapter 34.04 RCW.

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(12)

1 Unless, within thirty days of such notification, five
2 of the members of the commission, notify the director
3 in writing of their disapproval of such proposed rules
4 and regulations and their reasons therefore, such rules
5 and regulations shall be adopted by the director in
6 accordance with the procedures of chapter 34.04 RCW.
7 RCW 43.21A.190. (Emphasis Added).

8 The language underscored above in the Commission's statute does not
9 describe the process for shoreline master program adoption or
10 amendment set forth in the Shoreline Management Act, which became law
11 in the year after the Commission was established. Under the Shoreline
12 Management Act:

13 Master programs or segments thereof shall become
14 effective when adopted or approved by the department
15 as appropriate. With the time period provided in RCW
16 90.58.080, each local government shall have submitted
17 a master program, either totally or by segments, for
18 all shorelines of the state within its jurisdiction to
19 the department for review and approval. . . RCW
20 90.58.090.

21 This pattern was reiterated with regard to master program amendments:

22 The department and each local government shall
23 periodically review any master programs under its
24 jurisdiction and make such adjustments as are
25 necessary. Any adjustments proposed by a local
26 government to its master program shall be forwarded to
27 the department . . . RCW 90.58.190.

DOE adopts or approves shoreline master programs and amendments by
promulgating them as administrative rules. Harvey v. Board of County
Commissioners of San Juan County, 90 Wn.2d 473, 584 P.2d 391 (1978).

However, it is each local government which proposes the shoreline
master program and amendments. Since these proposals originate with

1 the local governments and not DOE, we hold that the legislature did
2 not intend that shoreline master programs and amendments were the sort
3 of rules or regulations contemplated by RCW 43.21A.190. While the
4 advice of the Commission may be sought, they need not be consulted by
5 DOE for their approval or disapproval. Accordingly, DOE erred when it
6 concluded that it was bound by the Commission's disapproval of San
7 Juan County's proposed master program amendments.

8 IX

9 Review of the Rejection. We review the rejection of the proposed
10 master program amendments under two standards set forth at RCW
11 90.58.190(2). Where the amendments relate to "shorelines" we
12 determine the validity of the amendments in light of the policy of RCW
13 90.58.020 and the applicable guidelines. Where the amendments relate
14 to "shorelines of state wide significance" the decision of the DOE
15 must be shown by clear and convincing evidence and argument to be
16 inconsistent with the policy of RCW 90.58.020 and the applicable
17 guidelines.

18 X

19 RCW 90.58.020 provides in pertinent part:

20
21 The legislature further finds that much of the
22 shorelines of the state and uplands adjacent thereto are
23 in private ownership; that unrestricted construction on
24 the privately owned or publicly owned shorelines of the
25 state is not in the best public interest; and therefore,
26 coordinated planning is necessary in order to protect the
27 public interest associated with the shorelines of the
state, while at the same time, recognizing and protecting
private property rights consistent with the public
interest. There is, therefor, a clear and urgent demand

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1 for a planned, rational, and concerted effort, jointly
2 performed by federal, state, and local governments, to
3 prevent the inherent harm in an uncoordinated and
piecemeal development of the state's shorelines.

4 It is the policy of the state to provide for the
5 management of the shorelines of the state by planning for
6 and fostering all reasonable and appropriate uses. This
7 policy is designed to insure the development of the
8 shoreline in a manner which, while allowing for limited
9 reduction of rights of the public in the navigable waters,
10 will promote and enhance the public interest. This
11 policy contemplates protecting against adverse effects to
12 the public health, the land and its vegetation and
13 wildlife, and the waters of the state and their aquatic
14 life, while protecting generally public rights of
15 navigation and corollary rights incidental thereto.

16 The legislature declares that the interest of all of the
17 people shall be paramount in the management of shorelines
18 of statewide significance. The department, in adopting
19 guidelines for shorelines of statewide significance, shall
20 give preference to uses in the following order of
21 preference which:

22 1) recognize and protect the statewide interest over
23 local interest;

24 2) preserve the natural character of the shoreline;

25 3) result in a long-term over short-term benefit;

26 4) protect the resources and ecology of the
27 shorelines;

5) increase public access to publicly owned areas of
the shoreline;

6) increase recreational opportunities for the public
and the shoreline;

7) provide for any other element as defined in RCW
90.58.100 deemed appropriate or necessary.

1 In the implementation of this policy, the public's
2 opportunity to enjoy the physical and aesthetic qualities
3 of natural shorelines of the state shall be preserved to
4 the greatest extent feasible consistent with the overall
5 best interest of the state and the people generally. To
6 this end, uses shall be preferred which are consistent
7 with control of pollution and prevention of damage to the
8 natural environment, or are unique to or dependent upon
9 use of the state's shoreline. Alterations of the natural
10 condition of the shorelines of this state, in those
11 limited instances when authorized, shall be given priority
12 for single family residences, ports, shoreline
13 recreational uses, including but not limited to parks,
14 marinas, piers, and other improvements facilitating public
15 access to shorelines of the state, industrial and
16 commercial developments which are particularly dependent
17 on their location on or use of the shorelines of the state
18 and other development that will provide an opportunity for
19 a substantial number of people to enjoy the shorelines of
20 the state . . .

21 Permitted uses in the shorelines of the state shall be
22 designed and conducted in a manner to minimize, insofar as
23 practical, any resultant damage to the ecology and
24 environment of the shoreline area and any interference
25 with the public's use of the water. RCW 90.58.020
26 (Emphasis added).

27 XI

The applicable guidelines in this matter are set forth at WAC
173-16-060(2) which provides:

Aquaculture is the culture or farming of food fish,
shellfish, or other aquatic plants and animals. This
activity is of statewide and national interest.
Properly managed, it can result in long-term over
short-term benefit and can protect the resources and
ecology of the shoreline. Aquaculture is dependent on
the use of the water area and, when consistent with
control of pollution and prevention of damage to the
environment, is a preferred use of the water area.

1 Potential locations for aquaculture are relatively
2 restricted due to specific requirements for water
3 quality, temperature, flows, oxygen content, adjacent
4 land uses, wind protection, commercial navigation, and,
5 in marine waters, salinity. The technology associated
6 with present-day aquaculture is still in its formative
7 stages and experimental. Local shoreline master plans
8 should therefore recognize the necessity for some
9 latitude in the development of this emerging economic
10 water use as well as its potential impact on existing
11 uses and natural systems.

12 (a) Guidelines:

13 (i) Aquaculture activities and structures
14 should be located in areas where the navigational
15 access of upland owners, recreational boaters, and
16 commercial traffic is not significantly restricted.

17 (ii) Recognition should be given to the
18 possible detrimental impact aquaculture development
19 might have on the visual access of upland owners
20 and on the general aesthetic quality of the
21 shoreline area.

22 (iii) As aquaculture technology expands with
23 increasing knowledge and experience, emphasis
24 should be placed on structures which do not
25 significantly interfere with navigation or impair
26 the aesthetic quality of Washington shorelines.

27 (iv) Certain aquacultural activities are of
statewide interest and should be managed in a
consistent manner statewide. Local master program
development and administration should therefore
seek to support state aquaculture management
programs as is expressed in state laws,
regulations, and establish management plans. State
management programs should seek to determine and
accommodate local environmental concerns. To
facilitate state-local coordination, the department
will encourage state agencies to develop specific
resource management plans and to include
participation of local shoreline agencies.

1 (v) Shellfish resources and conditions
2 suitable for aquaculture only occur in limited
3 areas. The utility and productivity of these sites
4 is threatened by activities and developments which
5 reduce water quality such as waste discharges,
6 nonpoint runoff and disruption of bottom
7 sediments. Proposed developments and activity;
8 should be evaluated for impact on productive
9 aquaculture areas. Identified impacts should be
10 mitigated through permit conditions and performance
11 standards.

12 (vi) Aquaculture is a preferred,
13 water-dependent use. Water surface column and
14 bedland areas suitable for aquaculture are limited
15 to certain sites. These sites are subject to
16 pressures from competing uses and degradation of
17 water quality. The shoreline program is intended
18 to provide a comprehensive land and water use plan
19 which will reduce these conflicts and provide for
20 appropriate uses. Therefore, a special effort
21 should be made through the shoreline management
22 program to identify and resolve resource use
23 conflicts and resource management issues in regard
24 to 173-16-060(2) (Emphasis added).

25 XII

26 We turn now to the aquaculture amendments proposed by San Juan
27 County in this case. The amendments are being challenged here on the
general ground that they infringe the priority status of aquaculture
as a water dependent use. However, the very priority accorded water
dependent uses is balanced against protection of the public health,
the land, its vegetation, wildlife and the waters of the state
including rights of navigation and corollary uses. RCW 90.58.020.
supra. Likewise the priority of aquaculture is stated conditionally
in DOE's guidelines as preferred when consistent with control of

1 pollution and prevention of damage to the environment. WAC
2 173-16-060(2), supra. We conclude that the amendments do not infringe
3 upon the priority accorded aquaculture in either RCW 90.58.020 or the
4 applicable guidelines.

5 XIII

6 The amendments are further challenged as setting forth policies
7 which "flatly prohibit" aquaculture (See Finding of Fact VIII,
8 above). As noted in the County's brief at p.6, lines 6-7, the
9 policies "are phrased as guidelines, not as statements of absolute
10 permission or prohibition". The qualifying language of the policies
11 employs terms such as "substantially and materially conflict" (Policy
12 5c.), "substantially degrade" (Policy 5d.) "significantly restricted"
13 (Policy 5e.), "significant adverse environmental impacts" (Policy
14 5f.), and "adversely affect" (Policy 5g.). These are standards
15 allowing factual inquiry and discretionary decision making on a case
16 by case basis. They are not prohibitions. We conclude that the
17 amendments do not prohibit aquaculture but allow for the assessment of
18 each proposal's environmental effect as contemplated in RCW 90.58.020
19 and the applicable guidelines.

20 XIV

21 The amendments are challenged for substantive restrictions
22 applicable to aquaculture. (See Finding of Fact VIII, above). We
23 have reviewed each of these and find them to be commensurate with the
24 potential impacts which aquaculture may pose. Indeed, in past
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1 contested cases involving aquaculture proposals we have found many of
2 these requirements necessary to conform the proposal with the
3 Shoreline Management Act. See DNR v. Kitsap County, SHB 78-37 (1980),
4 aff'd 107 Wn.2d 801 (1987) (five year permit term, limitation of the
5 hours of operation to limit noise; Mark Holland v. Kitsap County, SHB
6 No. 86-22 (1987), and Tailfin, Inc. v. Skagit County, SHB No. 86-29
7 (1987) (liability insurance, performance bond.) We conclude that the
8 amendments impose substantive restrictions on aquaculture which are
9 consistent with RCW 90.58.020 and the applicable guidelines.

10 XV

11 The amendments are challenged for procedural restrictions
12 applicable to aquaculture. (See Finding of Fact VIII, above). In the
13 past contested cases cited above we have imposed certain of these as
14 necessary to conform the proposal to the Act. DNR v. Kitsap, supra
15 (baseline study); Holland and Tailfin, supra (operational monitoring
16 by the permittee). As to the environmental assessment and visual
17 impact analysis, these are consistent with the concern for aesthetics
18 and other environmental impacts found both in RCW 90.58.020 and the
19 aquaculture guidelines.

20 XVI

21 After full consideration, we determine that these aquaculture
22 amendments, as they relate to shorelines, are valid in light of the
23 policy of RCW 90.58.020 and the applicable guidelines. As to
24 shorelines of state-wide significance, we are persuaded by clear and
25

1 convincing evidence and argument that the rejection by DOE is
2 inconsistent with the policy of RCW 90.58.020 and the applicable
3 guidelines. The amendments should therefore be upheld.

4 XVII

5 Any Finding of Fact deemed to a Conclusion of Law is hereby
6 adopted as such., From these Conclusions of Law, the Board enters this
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ORDER

The rejection of these San Juan County Shoreline Master Program amendments is hereby reversed. The matter is remanded to Department of Ecology with instructions to approve the amendments.

DONE at Lacey, WA, this 7th day of April, 1989.

SHORELINES HEARINGS BOARD

Wick Dufford

WICK DUFFORD, Chairman

Judith A. Bendor

JUDITH A. BENDOR, Member

Harold S. Zimmerman

HAROLD S. ZIMMERMAN, Member

Nancy Burnett

NANCY BURNETT, Member

Gordon F. Crandall

GORDON CRANDALL, Member

Paul Cyr

PAUL CYR, Member

William A. Harrison

WILLIAM A. HARRISON
Administrative Appeals Judge